

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
445 12th Street, S.W.  
Washington, DC 20554

In the Matter of:

Amendment of Part 97	)	
Of the Rules Governing	)	<b>WT Docket 04-140</b>
The Amateur Service	)	

To: The Commission

Ex-parte PRESENTATION filed by Paul S. Courson, WA3VJB

In the time since the FCC requested comment and extended the deadline for Reply Comments on its Docket 04-140, a matter related to this proceeding has come up and has been referenced in documents filed on the FCC Electronic Comment Filing System.

PRESENTER offers additional information to help guide the FCC in its deliberations on 04-140. This seems best filed *ex-parte* as defined in the Commission's rules, which state in part:

A presentation is a communication directed to the merits or outcome of a proceeding, including any procedural or other issues raised in the proceeding.

Background

The Commission released Docket 04-140 with an announcement and discussion of the agency's having acted on several Petitions for Rulemaking, while offering other matters up for Comment before what is anticipated to be a Report and Order.

This Presentation supports an action the FCC has taken in rejecting one such Petition, and seeks consideration of the logic behind the agency's decision in that matter to pre-empt a future Petition that has emerged as a published draft proposal, and could eventually cross the Commission's desk as a request for Rule Making.

The threatened petition was referenced in 04-140 by the filings of a lawyer representing a non-profit publishing and membership group incorporated as the American Radio Relay League (ARRL), but which also trades by the name National Association for Amateur Radio. This group operates an amateur club station under the call sign W1AW, licensed to the company's compound at Newington, Connecticut.

The filing the FCC received 06/15/2004 from Christopher Imlay, Esq., a communications attorney whose clients include the ARRL, warns that this group is preparing a rival plan than what may emerge from, and be at odds with, the agency's careful consideration of matters now presented and Commented upon in its Docket 04-140.

A few people developed the group's plan behind closed doors without input from a substantial cross-section of established operators. This team specifically lacked significant input from those who use the shortwave ham bands in compliance with the Rules. They also acted from a unilateral action by the non-profit group's administrators instead of the advance, expressed support of the group's base of subscribers, who normally would be responsible for prompting such a move through a democratic process.

According to a draft proposal circulated on an ARRL internet website, the group seeks to use the regulatory structure governing the Amateur service to specifically promote novel, embryonic "digital" modes. This would be accomplished, in theory, by forcing their inclusion into a full time, inflexible, mandatory bandwidth-based system affecting all of our popular modes and activities on the shortwave ham bands.

In a pre-amble to the draft proposal, the group acknowledges that its volunteer management and staff technical writers decided to use the regulatory structure to help win acceptance for the general category of "digital" communications, none of which has seen significant use on the shortwave ham bands According to FCC enforcement records, digital modes are not presently causing interference to warrant protection for popular contemporary activities using reliable, proven technology for emergency and hobbyist communications.

The ARRL states:

The specific bandwidth limits, once incorporated in the Rules, would promote some new technologies and allow a more natural development of popular new digital technologies.

The group failed to provide any statistics to support its claim of popularity, but at best, such modes are specialty communications, and represent the personal operating interests of a very small percentage of the active Amateur population for the foreseeable future.

In rejecting a Petition for mandatory, protected zones for weak Morse code activity on the 160m Amateur band, the FCC affirmed the successful voluntary system of coordination today in place, and said, in part:

..the voluntary nature of the band plan allows amateur service licensees the flexibility to make any changes if and when they are needed to reallocate the spectrum among operating interests as new operating interests and technologies emerge...

We have seen with the decisive, positive action taken in 04-140 that the Commission wishes not to open the Rules to requests for similar advantages that would inevitably be proffered by enthusiasts for the some 1200 modes the FCC already approves of and encourages Amateur licensees to use.

Moreover, although it has negative implications for the ARRL's misguided proposal, the FCC has indicated a willingness to shift toward the elimination of regulatory segregation of modes and activities, to allow what has become known as the dynamic selection of operating that makes the best use of clear spots on the dial where activity can cooperatively exist without interference.

There will undoubtedly be enthusiasts for today's and tomorrow's permitted communications modes. Levels of interest will help validate rising modes or, as in the case of Morse Code, prompt regulatory shifts that scale back Rules protection to match declining operating activity.

Presenter urges the Commissioners to DECLINE to accept a bandwidth-based proposal by not assigning a Rule Making number should this group present the idea, which appears to be proceeding despite strong opposition now underway in the broader amateur community.

### Discussion

The information that follows is derived from deliberations by two ad hoc committees that have formed in response to the threatened bandwidth scheme. These panels are among a greater number now discussing this issue, and appear to best represent a variety of interests in the Amateur Service.

Members identify themselves as active, hobbyist radio operators expressing their observations as individuals. None of these licensees has expressed any pre-disposed agendas based on publishing, lobbying, commercial interests, or other corporate ties.

Their deliberations have been published in public forums, and include electronic correspondence and identifiable postings to open, internet "bulletin board" communications systems.

One of the leading dissenters is Skip Teller, KH6TY, who was one of the men who met behind closed doors at the ARRL as this threatened petition took form. He refused to endorse what came out, and now says the proposal should be withdrawn because it "... is so enormously biased in favor of wideband digital modes and automatic robot transmitters scattered everywhere without any restrictions" --www.QRZ.com 09/02/2004

Outsiders reviewing the limited information the ARRL chose to reveal were struck by, as William Collins, K8NQC put it, the incompatible nature of audio data copied by the human ear when placed alongside data copied by machine.

Charles Young, AG4YO, a Communications Engineer for past 35 years, said phone communications can prevail through moderate interference because "...between speech segments, the signal goes down. Many digital modes will be constantly modulated (90%) so the possibility of interference is pretty high." *–ibid*

Delbert Herald, WF7I was more visceral reacting to a plan that promotes uncoordinated mixing, saying "So, all of the normal skeds, rag chews, etc will still be allowed, but will now have to "share" the band with all the data users. " *--op. cit. 09/07/2004*

George McCouch, K3UD would support a defined operating space for the development of digital modes, as an "incubator," but warned "The ARRL band plan will not only establish the incubator but will also allow incompatible modes have free reign over the entire spectrum. It almost seems like a plan to eventually drive out SSB and AM (and maybe CW?) via unacceptable interference. *–op cit. 09/08/2004*

Jerry Kutche, N9LYA, obtained what he proffered to be a dissenting and "suppressed" report from the closed-door panel. It concludes, based on the composition of the panel's members, that: "The majority recommendation of the ARRL hf digital committee represents the interests of a small special interest group, Winlink, representing 0.007% of the FCC licensed radio amateurs in the United States, and NOT the interests of ALL radio amateurs, as requested by ARRL president, Jim Haynie." *--www.QRZ.com 09/09/2004*

For the record, one ad hoc committee on [www.QRZ.com](http://www.QRZ.com) reviewing the threatened bandwidth petition drew 10 individual participants<sup>1</sup>. A second group, also a general interest panel (not a specialty reflector or internet site), drew 24 individual participants<sup>2</sup>. An unscientific poll of the hundreds of contributions among such panels shows overwhelming opposition to the ARRL's plan.

<sup>1</sup> Members consist of, by call sign, KH6TY, W8BQ, KX8N, KE4ZHN, N4ZOU, N4DST, W5ALT, KE2IV, ABØWR, and W9WHE.

At <http://www.qrz.com/ib-bin/ikonboard.cgi?s=40828dff3a9566dabb0cf642cf8dd80d;act=ST;f=3;t=71096>

<sup>2</sup> Members consist of, by call sign, AG4YO, W3MIV, **WA3VJB**, W5MEJ, KB1GYQ, N5RFX, WF7I, K3UD, N9CJT, N1ZZZ, N9LYA, N8FXH, N8QGC, K8AG, KE6IRP, WA5ZNU, KQ6KA, NØNWO, KD5OWO, N5PVL, K8NQC, N3NL, W8MW, and KE1BB.

At <http://www.qrz.com/ib-bin/ikonboard.cgi?s=40828dff3a9566dabb0cf642cf8dd80d;act=ST;f=3;t=70483;st=0>

## History

The Federal Communications Commission on its own initiative proposed a bandwidth-based coordination system for modes and activities in the Amateur service in 1976. The proposal failed after licensees expressed overwhelming opposition. The agency acknowledged that Commenters at that time successfully established their preference for the system of mode-based divisions, a system that continues to this day.

More recently, as part of its *Decision* against **RM-9259**, released November 29, 1999, the Commission stated:

Voluntary band planning within the amateur service community, by licensees and representatives of licensees who have a vested interest in ensuring fair and effective use of amateur service frequencies, is a method that the amateur service community has long used to meet the requirement of Section 97.101 that each licensee and control operator make the most effective use of the amateur service frequencies.

This has a direct bearing on the threatened petition from the group in Newington, since a bandwidth-based scheme would be at odds with the FCC's view, expressed in that same *Decision*, that:

The Commission's role in amateur service band planning, especially on the HF and Medium Frequency amateur service bands, generally has been limited to establishing the emission types that can be transmitted in different frequency segments.

That prevailing FCC philosophy is in keeping with a long tradition of voluntary coordination of modes and activities in the Amateur service. The reasons behind this philosophy remain valid, and explain why this style of coordination has been perpetuated for decades.

These reasons now provide the basis for the Commission to refuse to assign a Rule Making number to any such Petition that seeks advantages for specialty modes or activities, especially those that are insignificant in the agency's mission of being the final step in a process of resolving interference complaints that starts with goodwill, self-policing within the Amateur ranks, and voluntary coordination.

## Conclusion

The ARRL has said it is financially troubled and admits in documents that it does not hold paid subscriptions from the majority of licensed amateur radio operators. The allure of fresh advertising and possible corporate sponsorship related to new equipment sales and publishing potential regarding novel modes must be tempting, but cannot be allowed to undercut established, active, mainstream operating activity, and this includes preventing the use of the regulatory structure as a promotional tool for specialty modes fronted by a few buffs within their group. Nonetheless, the group should be allowed to continue filing reasonable Petitions for Rule Making as any other group or individual enjoys the privilege of so doing.

Future regulatory requests from that group or any others may instead suggest the stronger approach of proposing the addition of certain digital modes to the existing list of accepted emissions types. Such a proposal could be combined with an outline for voluntary coordination of where such modes could operate as a way of minimizing their potential to interfere with established modes. This voluntary system of coordination is entirely in concert with recent and historic enforcement and regulatory philosophies the Commission is charged with carrying out.

Signed & respectfully submitted for consideration,  
/s/

Paul S. Courson  
Amateur Advanced WA3VJB  
P.O. Box 73  
West Friendship, Maryland 21794

*Licensed since 1971*